

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO, LTD;
SAMSUNG ELECTRONICS AMERICA,
INC.; SAMSUNG SEMICONDUCTOR
INC.,

Defendants.

Civil Action
No. 2:22-cv-293-JRG
(LEAD CASE)

JURY TRIAL DEMANDED

NETLIST, INC.,

Plaintiff,

vs.

MICRON TECHNOLOGY, INC.; MICRON
SEMICONDUCTOR PRODUCTS, INC.;
MICRON TECHNOLOGY TEXAS LLC,

Defendants.

Civil Action
No. 2:22-cv-294-JRG

JURY TRIAL DEMANDED

ORDER

The Court, having considered the briefing on Micron’s *Daubert* Motion and Motion to Strike Expert Testimony of Mr. David Kennedy and exhibits attached thereto, hereby **GRANTS** Defendants’ Motion. Mr. David Kennedy is precluded, pursuant to Federal Rules of Civil Procedure 702, 401, and 403, from offering opinions in accordance with the below.

Expert Report of Mr. David Kennedy (Ex. 1)

Rationale for Exclusion	Citation
Argument A (The Court Should Strike Mr. Kennedy's Opinions Regarding the Samsung Litigation Jury Verdict)	<i>Ex. 1 Paragraphs:</i> 364-372, 688-696 and all footnotes corresponding to those paragraphs.
Argument B (The Court Should Strike Mr. Kennedy's Opinion That the Rambus Agreement Is Relevant to the Hypothetical Negotiation)	<i>Ex. 1 Paragraphs:</i> 500-504, 697 and all footnotes corresponding to those paragraphs.
Argument C (The Court Should Strike Mr. Kennedy's Opinions Regarding DDR4 LRDIMMs Damages Because He Does Not Reliably Apportion Damages)	<p><i>Ex. 1 Paragraphs:</i> 193–195, 202–204, 211 and all footnotes corresponding to those paragraphs.</p> <p><i>Ex. 1 Section Headings:</i> 8 (“Measuring the Economic Benefit of the Patents in Suit”).</p> <p>Any opinion regarding DDR4 LRDIMM damages.</p>
Argument D (The Court Should Strike Mr. Kennedy's Opinions Regarding Willfulness and Netlist's February 2015 Slide Deck and April 2015 Slide Deck)	<i>Ex. 1 Paragraphs:</i> 49-52, 54-63, 593-594 and all footnotes corresponding to those paragraphs.

Rebuttal Expert Report of Mr. David Kennedy (Ex. 5)

Rationale for Exclusion	Citation
Argument E(1) (Mr. Kennedy is not qualified to opine on complex economic issues such as market definition and effect on competition.)	<p><i>Ex. 5 Paragraphs:</i> 16, 19, 31-40, 42-57, 75, 103-08, 121-23, 125-29, 134, 136-40, 177, 179-80, 184, 193, and all footnotes corresponding to those paragraphs.</p> <p><i>Ex. 5 Section Headings:</i> 4 (“Dr. Lynde's definition of the relevant market is flawed”), 6 (“The MFL Provision...is Pro-competitive”), 8 (“Dr. Lynde has not identified any harm to competition or damages”).</p>
Argument E(2) Certain of Mr. Kennedy's opinions are untethered to the facts and claims of this case.	<i>Ex. 5 Paragraphs:</i> 40-44, 53-54, 106, 179, 193, and all footnotes corresponding to those paragraphs.

IT IS SO ORDERED.